

REMARKS

The applicants respectfully request reconsideration in view of the amendment and the following remarks. The applicants have rewritten claims 11, 33 and 52 as newly added claims 61-63 respectively. The applicants have corrected the formula as suggested by the Examiner. The applicants have corrected the specification as requested by the Examiner. Support for the change in the specification can be found at page 3, lines 3-5.

Claims 11, 33 and 52 were rejected under 35 U.S.C. § 112, second paragraph. Claims 1-60 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the combined teachings of Roberts et al US 5,877,112 ("Roberts") and Turner (D.J. "Effects on glyphosate performance of formulation, additives and mixing with other herbicides" ("Turner"). The applicants respectfully traverse these rejections.

Section 112 Rejections

Claims 11, 33 and 52 were rejected under 35 U.S.C. § 112, second paragraph. The applicants believe that the claims as amended are in compliance with 35 U.S.C. § 112, second paragraph. The applicants previously argued that the Examiner was wrong with respect to the rejection of claims 11, 33 and 52. The applicants believe that the formula was clear to one of ordinary skill in the art, but the applicants agree that the Examiner is correct that it would be better to redraft the formula as presented in claims 61-63. For the above reasons, this rejection should be withdrawn.

Section 103 Rejection

Claims 1-60 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the combined teachings of Roberts and Turner.

Roberts is cited in the applicants' specification at page 1, lines 21-28 of the specification. The formulation in Roberts is expensive, largely because of the addition of phosphate ester surfactants. As pointed out in the specification, "It would be beneficial if there were alternative, less expensive ways of obtaining formulation stability than using phosphate esters." The applicants' claimed invention uses little or no phosphate esters. The applicants have four independent claims (Claims 1, 29, 52 and 55). All of these claims require, "the proviso that the composition contains less than 3 percent by weight of phosphate ester surfactant" (see the proviso at the end of claims 1, 29, 52 and 55). The examples of Roberts require a phosphate ester surfactant in an amount of 10%, 14%, and 5% (see examples 1, 2 and 4 respectively). Therefore, Roberts teaches away from the applicants' claimed invention of having less than 3% of phosphate ester.


Turner does not cure the deficiencies of Roberts. For the above reasons, this rejection should be withdrawn.

The Examiner questioned what was an eye irritating amount of carboxylic acid. Eye irritation is determined using EPA mandated test protocols to be run on the compositions. Brigrance WO 00/41567 defines the EPA protocol at page 7, lines 29-32.

No additional fees are due. If there are any additional fees due in connection with this filing, including any fees required for an additional extension of time under 37 CFR 1.136, such an extension is requested and the Commissioner is authorized to charge or credit any overpayment to Deposit Account No. 03-2775. For the reasons set forth above, Applicants believe that the claims are patentable over the references cited and applied by the Examiner and a prompt and favorable action is solicited. The applicants believe that these claims are in

condition for allowance, however, if the Examiner disagrees, the applicants respectfully request that the Examiner telephone the undersigned at (302) 888-6270.

Respectfully submitted,

By 
Ashley I. Pezzner

Registration No.: 35,646
CONNOLLY BOVE LODGE & HUTZ LLP
P. O. Box 2207
Wilmington, Delaware 19899-2207
(302) 658-9141
(302) 658-5614 (Fax)

RECEIVED
FEB 12 2004
TECH CENTER 10032003